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ABSTRACT

This guide to work-based learning and the Fair Labor Standards Act (FLSA) is designed to serve employers, educators, agency placement staff, labor organizations, and persons involved in school-to-work initiatives by helping them to understand a variety of issues related to students in the workplace. The first part of the three-part guide covers work-based learning, including information on coverage of work-based learning under the FLSA. The second part explains the FLSA, including information on when work-based learning is subject to FLSA, the standards and special provisions for employing minors, minors driving on the job, and proof of age. Four exhibits set out the standards for 16-17 year-olds and 14-15 year-olds (nonfarm), Work Experience and Career Exploration Program requirements for 14-15 year-olds, and standards for farm jobs. The third part of the guide provides general information, including coordinating state and local laws with the FLSA, waivers of FLSA, terminology, resources, and contacts for assistance. Regional Department of Labor, Wage and Hour Division offices are listed with addresses and telephone numbers. (KC)

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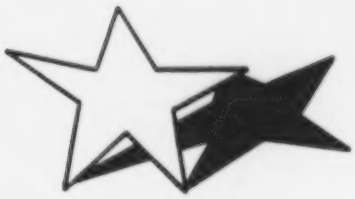

School-to-Work Opportunities and the Fair Labor Standards Act

A Guide to Work-Based Learning, Federal Child Labor Laws, and Minimum Wage Provisions

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School-to-Work Opportunities

The School-to-Work Opportunities Act of 1994 (P.L. 103-239) paves the way for a new approach to learning in America. Through this Act, States and localities will build high quality school-to-work opportunities systems that prepare young people for further education and careers in high-skill, high-wage jobs.

School-to Work is based on the proven concept that education for all students can be made more relevant and useful to future careers and lifelong learning. Rather than just memorizing facts out of a textbook, students will learn by applying what they learn to real life, real work situations.

Developed with the input of business, education, labor and community-based organizations that have a strong interest in how American students prepare for the changing world of work in the 21st century, the effort to create a national school-to-work system contains three fundamental elements:

★ ***Work-based learning***. Employers provide structured learning experiences for students that develop broad, transferable skills. Work-based learning provides students with opportunities to study complex subject matter as well as vital workplace skills in a hands-on, "real life" environment.

★ ***School-based learning***. School-to-Work programs restructure the educational experience so that students learn rigorous academics through career applications. Teachers work together with employers to develop broad-based curricula that help students distill and deepen lessons of their work experience. Students actively develop projects and work in teams, much like the modern workplace.

★ ***Connecting activities***. Connecting activities ensure the coordination of the work- and school-based learning components of a School-to-Work system. It may include matching students with the work-based learning opportunities of employers, linking participants with other community services necessary to assure a successful transition from school to work, and increasing opportunities for minorities, women and individuals with disabilities.

School-to-Work is jointly administered by the U.S. Departments of Education and Labor. For information regarding School-to-Work Opportunities, call the School-to-Work Offices at (202) 401-6222.

School-to-Work Opportunities

1st Edition **June 1995**

Work-Based Learning and the Fair Labor Standards Act

This guide on work-based learning and the Fair Labor Standards Act is designed to serve employers, educators, agency placement staff, labor organizations and all those involved in School-to-Work initiatives by helping them to understand a variety of issues related to students in the workplace.

This guide was produced by the U.S. Departments of Education and Labor's Office of School-to-Work Opportunities in support of the School-to-Work Opportunities Act (P.L. 103-239). Prepared in collaboration with the Office of the Solicitor and the Employment Standards Administration of the Labor Department, this guide is designed as an introductory overview of FLSA and is not intended to be used as an official interpretive document.

For more specific information and technical assistance on FLSA, please call the Department of Labor's Wage-Hour Division, listed on Page 19. For general information regarding School-to-Work Opportunities, call the School-to-Work Offices at (202) 401-6222.

Photocopying and wide dissemination of this guide is encouraged.

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A GUIDE TO WORK-BASED LEARNING, FEDERAL CHILD LABOR LAWS, AND MINIMUM WAGE PROVISIONS

Introduction

From its inception, the Fair Labor Standards Act has protected the rights, safety and well-being of youth workers in the United States. With the passage of the School-to-Work Opportunities Act in 1994, questions have arisen concerning whether a student's work-based learning experience is covered under the Fair Labor Standards Act.

Our goal in producing this guide is to assist you — the employers, educators, agency placement staff, labor organizations and all those who make School-to-Work (STW) systems possible.

STW initiatives cover a wide range of activities, some of which are subject to FLSA and some of which are not. FLSA specifies particular limits on the employment of minors under the age of 18. Under the School-to-Work Opportunities Act, no waivers of FLSA are permitted. However, participation in a STW initiative carries *no additional* compliance obligations under FLSA: working with STW students is just like working with other minors.

You'll want to read this guide in its entirety to become aware of the issues, noting also the possible application of State and local laws. Because the particulars of each work-based learning experience may differ, the total picture — and the legal terminology — must be taken into account to determine when FLSA applies. If, after reading the guide, you believe yours is not a clear-cut case, we urge you to contact the appropriate Wage-Hour Division Office listed on Page 19.

The guide addresses issues related to student learning experiences at an employer's worksite and explains when and how Federal child labor laws and minimum wage provisions apply. It is organized in three parts:

Part I - Work-Based Learning

Part II - Understanding the Fair Labor Standards Act (FLSA)

Part III - General Information

PART I. WORK-BASED LEARNING

Part I explains a variety of student learning experiences that may take place at an employer's worksite. Some learning experiences may not be employment relationships. The elements and criteria of such learning experiences are discussed here.

#1. WHAT IS WORK-BASED LEARNING UNDER STW?

Work-Based Learning

Work-based learning — a learning experience for a student at an employer's worksite — is one of the three core elements of STW systems, along with school-based learning and connecting activities. It includes work experience (both paid and unpaid), workplace mentoring, and broad instruction, to the extent practicable, in all aspects of an industry.

In addition, work-based learning includes a planned program of job training and work experience at progressively higher levels. This planned program, coordinated with school-based learning, relates to the career majors of students and leads to the award of skill certificates.

Instruction in general workplace competencies — including developing positive work attitudes, employability, and participative skills — is also part of the work-based learning component of STW.

#2. ARE ALL STW WORK-BASED LEARNING EXPERIENCES SUBJECT TO FLSA?

No. Activities occurring in the workplace that do not involve the performance of work are not "employment" subject to the Fair Labor Standards Act. Some examples of these activities include:

- Career awareness and exploration;
- field trips to a worksite;
- job shadowing (whereby a student follows and observes an employee in his/her daily activities, but performs no work).

a. What are the elements of a learning experience at an employer's worksite?

There are four elements that constitute a learning experience under STW. Specifically, a learning experience:

Elements of a Learning Experience

(1) is a planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to preemployment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate;

(2) encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;

(3) has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and

(4) provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

If only some of these elements are met, it is possible that an STW student would be an employee under FLSA; however, all of the facts and circumstances of the situation would have to be considered to decide if an employment relationship exists and whether the student or enterprise is covered by the FLSA. The Wage-Hour Offices listed on Page 19 can help you make the correct determination.

b. When is a learning experience not employment, as defined by FLSA?

Student Criteria

A student enrolled in an STW learning experience as described above would ***not*** be considered an employee within the meaning of FLSA if ***all*** of the following criteria are met:

(1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and

Student Criteria (cont.)

(2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee — i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work; and

(3) the student is not entitled to a job at the completion of the learning experience — but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and

(4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience — although the student may be paid a stipend for expenses such as books or tools.

When ***all four*** of the above student criteria are met, an employer would not be required to pay wages to a student enrolled in an STW learning experience.

c. What does it mean if a learning experience is not subject to FLSA?

It means that a student is not an employee, wages are not paid, and Federal child labor laws do not apply. Payment of a stipend is optional. However, a stipend may not be used as a substitute for wages. A stipend is generally limited to reimbursement for expenses such as books, tuition, or tools. There are no specific stipulations for the length of a learning experience, as long as the four criteria listed above apply throughout the period of the student's participation.

While child labor laws do not apply if there is not an employment relationship, STW systems are encouraged to adhere to child labor laws with regard to hazardous working conditions. Instruction and training in occupations that involve the use of machinery such as slicing machines, trash compactors, and bread dough kneading machines have been known to cause serious injuries. Child labor laws provide guidance that can assist STW participants in determining hazardous jobs or working conditions for students. (See Exhibits in Part II.)

PART II: UNDERSTANDING THE FAIR LABOR STANDARDS ACT

Part II applies to those STW situations where it is determined that (1) an employment relationship exists,[1] and (2) the enterprise or the student is covered under FLSA. Both conditions must be met for STW work-based learning experiences to be subject to the Federal minimum wage, overtime, and child labor laws described in this section.

Participation in an STW initiative carries no additional compliance obligations under FLSA; working with STW students is the same as working with other minors.

#3. WHEN IS A WORK-BASED LEARNING EXPERIENCE SUBJECT TO FLSA?

Learning experiences that do not meet ***all four*** student criteria listed on Pages 3 and 4 are employment relationships.

Employment Relationship

According to the Fair Labor Standards Act, the definition of "to employ" is "to suffer or permit to work." Case law states that an employment relationship "does not depend upon the level of performance or whether the work is of some educational and/or therapeutic benefit." [2]

a. When is a student who is an employee "covered" under FLSA?

The FLSA covers employees who are performing work for any one type of enterprise that is either:

Coverage under FLSA

- engaged in interstate commerce,
- producing goods for interstate commerce,
- handling, selling, or otherwise working on goods or materials that have been moved or produced for such commerce.

---

[1] As a general rule of thumb, if you pay wages or compensation, you create an employment relationship.

[2] This definition of "employ" pertains only to FLSA. Employment is defined differently under different laws, such as those dealing with income tax, worker's compensation, occupational safety and health, unemployment insurance, and others. You'll want to make sure you are in compliance with these other laws as well. (Check the blue pages of your local telephone book for the appropriate phone numbers to call for further information on these programs.)

Coverage under FLSA (cont.)

A covered enterprise under FLSA would be one:

(1) with annual gross volume of sales made or business done of not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(2) that is engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged, and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit);

(3) that is an activity of a public agency.

b. Can a student be covered, even if the enterprise is not?

Yes. An enterprise may not be covered under FLSA, given the above criteria, but certain employees of the enterprise may be, depending on the nature of their work. Specifically, if any employee is engaged in interstate commerce, this employee is covered and the provisions of FLSA apply to him or her.

Examples of interstate commerce include taking or placing out-of-state phone calls; sorting or sending out-of-state mail; receiving papers coming from out-of-state; and handling, shipping, and receiving products that are moving in interstate commerce.

(For more information on coverage, see the *Handy Reference Guide to the Fair Labor Standards Act*, or call the Wage-Hour Division Office. When calling, give detailed information on the particular situation because coverage depends upon the specific facts of each case.)

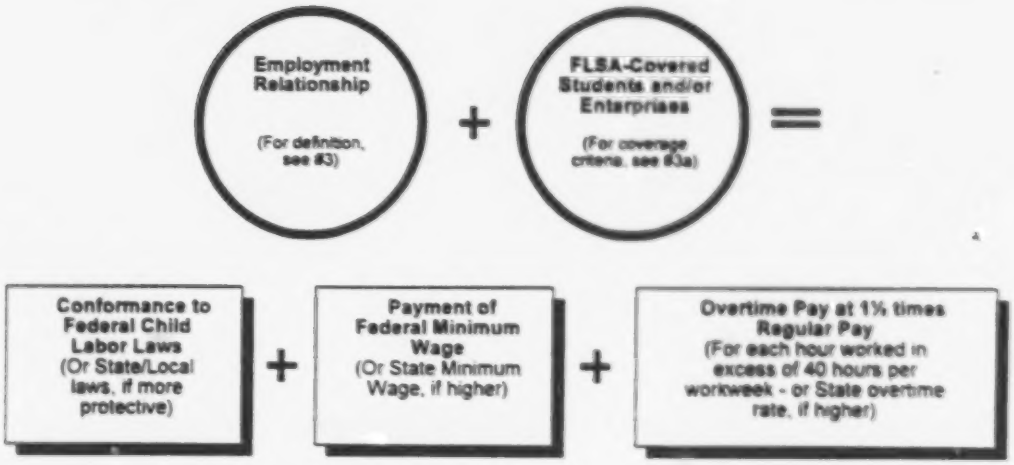
#4. WHAT ARE THE IMPLICATIONS OF AN EMPLOYMENT RELATIONSHIP "COVERED" UNDER FLSA?

When a student who is an employee is covered by FLSA, he or she must be paid no less than the Federal minimum wage,[3] receive no less than one and one-half times the regular rates of pay for each hour worked in excess of 40 per workweek, and be employed in accordance with child labor laws.

---

[3]Unless your school or business holds a subminimum wage certificate issued by Wage-Hour. Individuals eligible for employment under a subminimum wage certificate include: students with disabilities participating in a school-related work program, student-learners in a vocational education program, and full-time students in retail or service establishments, agriculture, or institutions of higher education.

STW & FLSA: What You Need to Know


Employment Relationship
(For definition, see #3)
+
FLSA-Covered Students and/or Enterprises
(For coverage criteria, see #3a)
=
Conformance to Federal Child Labor Laws
(Or State/Local laws, if more protective)
+
Payment of Federal Minimum Wage
(Or State Minimum Wage, if higher)
+
Overtime Pay at 1½ times Regular Pay
(For each hour worked in excess of 40 hours per workweek - or State overtime rate, if higher)

(No FLSA Waivers)

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Employing Minors

#5. WHAT ARE THE STANDARDS AND SPECIAL PROVISIONS FOR EMPLOYING MINORS?

Ages 14-17, see Exhibits 1-4

Once it is determined that there is an employment relationship that is covered by FLSA, then certain standards and limitations apply to the employment of STW students, according to their age. Exhibits 1, 2, and 3 (on Pages 11, 13 and 14 respectively) explain the standards and related special provisions in nonagricultural occupations for youth ages 14 and older, while Exhibit 4 (Page 15) lists the standards for farm jobs.

Student-Learners, Apprentices, WECEP

a. Are there any exceptions to the standards?

Yes, there are exceptions for student-learners and apprentices. A "student-learner" is one who is enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school.

An apprentice is a participant in an apprenticeship program legally registered by the Department of Labor's Bureau of Apprenticeship and Training or by an authorized State agency.

To qualify as an apprentice, one must obtain the appropriate certificate from the local U.S. Department of Labor Bureau of Apprenticeship and Training (BAT) office, or a state office approved by BAT.

The Work Experience and Career Exploration Program (WECEP) also includes special provisions that permit 14- and 15-year-old STW enrollees to be employed during school hours and in occupations otherwise prohibited by regulation. (See Exhibit 3.)

In addition, if your school or business holds a subminimum wage certificate issued by Wage-Hour, it may pay the following individuals a subminimum wage: students with disabilities participating in a school-related work program; student-learners in a vocational education program; and full-time students in retail or service establishments, agriculture, or institutions of higher education.

b. May students under age 14 participate in STW Programs?

Under Age 14

Yes. Students under age 14 may participate in education and training activities. These may include, but are not limited to, presentations in the classroom by employers and employees, field trips to businesses, and job shadowing (whereby a student follows and observes an employee in his/her daily activities, but performs no work).

In general, students under age 14 may not be employed in nonfarm jobs under FLSA. Therefore, while they may participate in school-to-work education and training activities, employment subject to FLSA may not be a component of their program.

c. May agricultural activities be included in STW Programs?

Agricultural Programs

Yes, but the standards for agricultural programs differ by the age of the students. Youths under age 16 enrolled in STW activities may be employed on farm jobs, but the child labor regulations contain limitations on their employment and generally limit work to periods outside local public school hours. Students 16 years of age and older may be employed in any farm job at any time. Exhibit 4 explains the child labor requirements for farm jobs.

For more information concerning the employment of minors in agriculture, contact the Wage and Hour Division, or see *The Child Labor Requirements in Agriculture Under the Fair Labor Standards Act*, Child Labor Bulletin No. 102.

#6. ARE MINORS PERMITTED TO DRIVE ON THE JOB?

Driving Restrictions

No. For nonfarm jobs, almost all driving of motor vehicles on public roads and highways is prohibited by Hazardous Occupations Order 2 (HO 2). (See Exhibit 1.)

The driving restriction even applies to student-learners and apprentices who, based on special provisions, are allowed to work in certain hazardous occupations. So, for example, a roofer apprentice would be allowed to perform some roofing work, but HO 2 would prohibit him or her from driving a company truck to and from job sites.

For farm jobs, minors may drive on the farm, but not on a public highway. (Certain restrictions apply to minors under age 16 driving farm equipment.)

★★★

a. Are any exceptions made?

Exceptions to Driving Restrictions

Driving that is "occasional and incidental" is permitted under FLSA. Specifically, driving is "incidental" if it is limited to no more than 20% of the minor's work in any workday and does not exceed 5% of the minor's work time in any workweek when performed.

Driving is "occasional" if the minor drove (a single episode of operating a motor vehicle on public roads or highways as part of his or her employment) on average no more often than once in a workweek or no more often than four times in a calendar month.

b. What about home-to-work travel?

No restrictions are placed on home-to-work driving for students who have valid drivers licenses and are driving their own personal vehicles, because such activity is outside of work hours and thus not covered by FLSA.

Proof of Age

#7. IS PROOF OF AGE REQUIRED UNDER FLSA?

FLSA requires employers to keep on file the date of birth of every employee under age 19. Because there may be cases where a minor could give an employer a false date of birth, and the employer thus unwittingly violates the minimum age standards of FLSA, we *strongly encourage* employers to obtain an *official age certificate* that proves the validity of the date of birth.

The certificate may be: (1) a Federal certificate of age, issued by the Wage-Hour Division; or (2) a State certificate, known as an age, employment, or working certificate or permit, issued by the appropriate State agency. (Please note that some States have laws requiring that the official age certificate be kept on file by the employer.)

EXHIBIT 1
STANDARDS FOR 16- AND 17-YEAR-OLDS

The following standards apply to 16- and 17-year-old youths employed in nonfarm jobs.

Hours Limitations

- None Under FLSA:Federal law does not limit either the number of hours nor the time of day that youth 16 years of age and older may work.
- Some state laws do restrict the hours that 16- and 17-year-olds may work.

Occupation Limitations

Minors may perform all work except in 17 occupations considered too hazardous for all youth under the age of 18. The Hazardous Occupations Orders (HOs) are:

HO 1 -	Manufacturing and storing explosives;
HO 2 -	Motor-vehicle driving and outside helper, including driving motor vehicles or working as outside helpers on motor vehicles or driving as a part of any occupation;
HO 3 -	Coal mining;
HO 4 -	Logging and sawmilling;
HO 5* -	Work using power-driven woodworking machines, including the use of saws on construction sites;
HO 6 -	Work where exposed to radioactive substances;
HO 7 -	Work involving the operation of power-driven hoisting devices, including the use of fork lifts, cranes and nonautomatic elevators;
HO 8* -	Work using power-driven metal forming, punching, and shearing machines (but HO 8 permits the use of a large group of machine tools used on metal, including lathes, turning machines, milling machines, grinding, boring machines and planing machines);
HO 9 -	All mining other than coal mining, including work at gravel pits;
HO 10*-	Work involving slaughtering or meat-packing, processing, or rendering, including the operation of power-driven meat slicers in retail stores;
HO 11 -	Work involving the operation of power-driven bakery machines;
HO 12*-	Work using power-driven paper-products machines, including the operation and loading of paper balers in grocery stores;
HO 13 -	Work in manufacturing of brick, tile and kindred products;
HO 14*-	Work involving the use of circular saws, band saws, and guillotine shears;
HO 15 -	All work involving wrecking, demolition and ship-breaking;
HO 16*-	All work in roofing operations; and
HO 17*-	All work in excavating, including work in a trench as a plumber.

EXHIBIT 1
STANDARDS FOR 16- AND 17-YEAR-OLDS

The following standards apply to 16- and 17-year-old youths employed in nonfarm jobs.

Exceptions to Occupation Limitations

Special Provisions for Student-Learners and Apprentices - The seven HOs identified with an asterisk permit the employment of apprentices and student-learners in vocational education programs under certain conditions. Student-learners in STW programs will meet the student-learner exemption if the student is employed under a written agreement which provides that:

(1) all hazardous work will be performed under the direct and close supervision of a qualified and experienced person;

(2) safety instructions will be given by the school and reenforced by the employer with on-the-job training;

(3) the job training follows a schedule which reflects organized and progressive skill developments; and

(4) the work in the hazardous occupation is *intermittent* and for *short periods of time* and is under the direct and close supervision of a journeyman as a necessary part of such apprenticeship training.

The written agreement must be signed by the employer and placement coordinator (or school principal). Copies of the agreement must be kept on file by both the school and the employer.

Note: **To qualify as an apprentice, one must obtain the appropriate certificate from the local U.S. Department of Labor Bureau of Apprenticeship and Training (BAT) office, or a state office approved by BAT.**

EXHIBIT 2
STANDARDS FOR 14- AND 15-YEAR-OLDS

The following standards apply to 14- and 15-year-old youths employed in nonfarm jobs.

Hours Limitations

The hours 14- and 15-year-olds may work are limited to:

- outside school hours,
- no more than 3 hours on a school day,
- no more than 18 hours in a school week,
- no more than 8 hours on a nonschool day,
- no more than 40 hours in nonschool weeks,
- between 7 a.m. and 7 p.m. (between June 1 and Labor Day they may work as late as 9 p.m.).

Occupation Limitations

In addition to the Hazardous Occupations listed in Exhibit 1 that are prohibited for minors under the age of 18, 14- and 15- year-olds may *not* work in the following occupations:

- cooking, other than at lunch counters and snack bars, and within the view of the customer,
- manufacturing, mining, processing;
- most transportation jobs;
- work in warehouses and workrooms;
- on construction jobs except in the office;
- in any job involving hoists, conveyor belts, power-driven lawn mowers and other power-driven machinery.

No Exceptions To Occupation Limitations

Occupation limitations are strictly enforced for 14- and 15-year-old youth, with no exceptions. The student-learner provisions applicable to some Hazardous Occupations for youth 16 and 17 years of age (as listed in Exhibit 1) do *not* apply to minors under the age of 16.

★★★

EXHIBIT 3
SPECIAL PROVISIONS FOR 14- and 15-YEAR-OLDS UNDER WECEP

The Work Experience and Career Exploration Program (WECEP) includes special provisions that permit 14-and 15-year-old STW enrollees to be employed during school hours and in occupations otherwise prohibited by regulation.

WECEP is designed to provide a carefully planned work experience and career exploration program for 14-and 15-year-old youths, including youths in STW programs, who can benefit from a career-oriented educational program. WECEP is designed to meet the participants' needs, interests, and abilities. Among other things, the program helps dropout-prone youths to become reoriented and motivated toward education and helps to prepare them for the world of work.

A State education agency with a school-to-work program may obtain approval from the Department of Labor for STW enrollees participating in WECEP to be employed:

- up to 3 hours on a school day,
- up to 23 hours during a school week,
- any time during school hours,
- under variances granted by the Wage and Hour Administrator that permit employment of WECEP participants in otherwise prohibited activities and occupations.*

Any representative of the Governor who is interested in establishing a WECEP may forward a letter of application to the Administrator of the Wage and Hour Division, U. S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The provisions for WECEP are set by Regulations 29 CFR Part 570.35a. Approval to operate a WECEP is granted by the Administrator of the Wage and Hour Division for a two-year period.

***Note: The Regulations do not permit issuance of WECEP variances in manufacturing, mining, or in any of the 17 hazardous occupations orders listed in Exhibit 1.**

★★★

EXHIBIT 4
STANDARDS FOR FARM JOBS

The following standards apply to minors employed in farm jobs.

Hours Limitations

- Minors 16 years and older may be employed in any farm job at any time.
- Fourteen and 15-year-old farmworkers may be employed outside school hours in any occupation not declared hazardous. Children who move from a school district where schools have closed for the summer vacation and live in another district where the schools are still in session, may work during the hours that the school is in session in the new district. After May 15, it is assumed that school is closed for the summer.
- With written parental consent, 12- and 13-year-olds may be employed outside school hours in any nonhazardous job on the same farm where their parents are employed.
- Minors under 12 years of age may be employed outside school hours in any nonhazardous job with written parental consent but only on farms not subject to the minimum wage provisions of FLSA.
- Minors of any age may perform work at any time on a farm owned or operated by the minor's parents or persons standing in place of the parents.

Occupation Limitations

- Once teenagers reach age 14, they may perform the same agricultural work as an adult except occupations that involve the agricultural hazardous occupations orders.
- Agricultural hazardous occupations orders apply to minors under age 16. These orders are listed in Child Labor Bulletin 102 - *The Child Labor Requirements in Agriculture under the Fair Labor Standards Act.*

Exemptions

Exemptions from the agricultural hazardous occupations orders applicable to tractors and certain other farm machinery apply to 14- and 15- year-old student learners enrolled in vocational educational programs and holders of certificates of completion of training under 4-H programs.

PART III. GENERAL INFORMATION

State and Local Laws

Part III highlights pertinent information on State and local laws, waivers, terminology, and resources available on FLSA.

#8. WHAT ABOUT STATE AND LOCAL LAWS?

When there are differences among Federal or State laws or regulations, or municipal ordinances, the stricter standard applies.

For instance, one State has no minimum wage law; in this case, the Federal minimum wage applies. In another State, the minimum wage is $.50 more than the Federal minimum wage — thus the State's minimum wage applies.

(Because it is beyond the scope of this guide to address each situation, we urge you to contact your State labor department to ensure that you are in compliance with the appropriate law.)

Waivers

#9. ARE THERE WAIVERS OF FLSA?

No! While Title V of the School-to-Work Opportunities Act does allow for the possibility of waivers for certain statutory and regulatory requirements, these do *not* apply to the Fair Labor Standards Act. In fact, the law specifically *prohibits* the Secretaries from waiving any statutory or regulatory requirement under any provision relating to labor standards and occupational safety and health.

Thus, if your situation involves an employment relationship and the work is covered by FLSA, you must meet all statutory and regulatory requirements for the employment of minors.

Terminology

#10. HOW IMPORTANT IS TERMINOLOGY?

Terminology is very important because misunderstandings can often occur. School-to-Work systems have already developed a vocabulary which may be different from the terminology used under FLSA. Thus, caution should be exercised in using terminology.

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For instance, it is common for teachers, who have had unpaid internships, to assume that other positions can be called internships, and thus are not covered. This is not the case. As it relates to school-to-work programs, only those meeting the learning experience elements and student criteria on Pages 3 and 4 are not covered by FLSA.

Terminology (cont.)

We encourage you to contact Wage-Hour staff (see Page 19) if you have any questions about terminology. They can help clarify the definitions of *apprentice, employment relationship, enterprise, hazardous occupations, internship, interstate commerce, minor, stipend, student-learner, trainee, work experience*, and other terms used under FLSA.

#11. WHAT RESOURCES ARE AVAILABLE ON FLSA?

Resources

The following resources on FLSA are available from the U.S. Department of Labor Wage-Hour Divisions listed on Page 19:

Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282

Employment Relationship Under the Fair Labor Standards Act, WH Publication 1297

Interpretive Bulletin, Part 785: Hours Worked Under the Fair Labor Standards Act of 1938, As Amended

The Child Labor Requirements in Nonagriculture Occupations Under the Fair Labor Standards Act, Child Labor Bulletin No. 101

The Child Labor Requirements in Agriculture Under the Fair Labor Standards Act, Child Labor Bulletin No. 102

The following resource can be obtained by calling NIOSH (1-800-356-4674):

Request for Assistance in Preventing Deaths and Injuries of Adolescent Workers. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 95-125.

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Assistance

#12. WHOM CAN WE CONTACT FOR ASSISTANCE?

The Wage and Hour Division, which is part of the Employment Standards Administration of the U.S. Department of Labor, administers several labor laws including the Fair Labor Standards Act, the Family and Medical Leave Act, the Davis Bacon Act, the McNamara-O'Hara Service Contract Act, the Migrant and Seasonal Agricultural Worker Protection Act, and the Employee Polygraph Protection Act.

The Wage and Hour Division is committed to assisting with the proper administration of STW programs. The Wage-Hour Offices listed on Page 19 can be contacted for informational and technical assistance at any level. They will assist State offices that administer STW programs and any of the local partners involved in STW system implementation.

Specifically, Wage-Hour staff can help delineate the issues of a work-based learning experience and help make the correct determinations regarding FLSA application and compliance. They share an interest in promoting safe education experiences that enhance the success of youth in making the school-to-work transition and becoming effective and productive workforce participants.

As partners in this effort, Wage-Hour staff are both committed to protecting the rights, safety, and well-being of youth workers and to serving you — the partners who are vital to the success of School-to-Work Opportunities.

Fair Labor Standards Act

FOR FURTHER INFORMATION ON FLSA, CONTACT:
U.S. Department of Labor
Employment Standards Administration, Wage - Hour Division
at the following locations:

BOSTON REGION
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Wage-Hour Division
One Congress Street
11th Floor
Boston, Massachusetts 02114
PHONE: (617) 565-2066
FAX: (617) 565-3700

NEW YORK REGION
(New Jersey, New York, Puerto Rico, Virgin Islands)

Wage-Hour Division
201 Varick Street, Room 750
New York, New York 10014
PHONE: (212) 337-2000
FAX: (212) 620-6957

PHILADELPHIA REGION
(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Wage-Hour Division
Gateway Building, Room 15230
3535 Market Street
Philadelphia, Pennsylvania 19104
PHONE: (215) 596-1185
FAX: (215) 596-1479

ATLANTA REGION
(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Wage-Hour Division
1375 Peachtree Street, N.E.
Room 662
Atlanta, Georgia 30367
PHONE: (404) 347-4801
FAX: (404) 347-0183

CHICAGO REGION
(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Wage-Hour Division
230 South Dearborn Street
Room 820
Chicago, Illinois 60604
PHONE: (312) 353-7280
FAX: (312) 353-2539

DALLAS REGION
(Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming)

Wage-Hour Division
Federal Building, Room 800
525 South Griffin Street
Dallas, Texas 75202
PHONE: (214) 767-6897
FAX: (214) 767-2730

KANSAS CITY REGION
(Iowa, Kansas, Missouri, Nebraska)

Wage-Hour Division
City Center Square Building
1100 Main Street, Suite 700
Kansas City, Missouri 64105-2112
PHONE: (816) 426-5386
FAX: (816) 426-3482

SAN FRANCISCO REGION
(Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington)

Wage-Hour Division
71 Stevenson Street, Room 930
San Francisco, California 94105
PHONE: (415) 744-6625
FAX: (415) 744-9479

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